

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**JOHN B. BERRY TRUSTEE  
and GEORGE H. REID  
INVESTMENTS, INC.  
Plaintiffs**



**CIVIL ACTION NO. H-05-1101**

**V**

**JURY**



**WPS, INC.**

**Defendants**

**PLAINTIFF'S THIRD AMENDED DESIGNATION OF EXPERT WITNESSES**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Plaintiffs and files this Plaintiffs' Third Amended Designation of Expert Witnesses,  
and would show the Court the following:

I.

**Plaintiffs designate the following expert witnesses to testify at the time of trial:**

1. Thomas G. Bousquet  
Linda K. Jackson  
Tom Devine  
Bousquet & Jackson, P.C.  
9225 Katy Freeway, Suite 103  
Houston, Texas 77024  
713-827-8000  
713-827-0096 fax

Will testify regarding the reasonable and necessary attorney's fees incurred by Plaintiffs herein through the trial and any appeal, and the amounts thereof. Their testimony regards the reasonable and necessary attorneys fees of plaintiffs among other things will based on \$425.00 for each hour expended in the preparation, filing, and trial and appeal of this case plus those items allowed by the Disciplinary Rules to be included in determining a reasonable and necessary fees. The final amount will be only known at the conclusion of the services. A resume was attached to the original designation.

2. Charles T. Meeks  
2308 Quail Run Cove  
Lago Vista, Texas 78645  
512-267-7060  
fax 512-267 2262

Mr. Meeks is an expert in the field of banking, finance, and damages. Some of his opinions are reflected by the report ( attached to the previous designation as Exhibit "B") he has prepared . He will testify that the sale\leaseback was bank loan fundable by Plaintiff, and his calculations of the lost income and profits that Plaintiff sustained by reason of Defendant's attempt to rescind the contract. His C.V. was attached to the previous designation as Exhibit "C".

3. John C. Salomone  
Structured Finance International  
1410 Bay Road  
Miami Beach, Fl 33139  
305-672-7793  
305-673-4383 fax

Mr. Salomone is an expert in the field of investment banking, equipment finance, advisory and damages. Some of his opinions are reflected by the report he has prepared ( attached to his previous designation as Exhibit "A"). He will testify as to the reasonableness of the fee compensation arrangements in the Consulting Services Agreement, the reasonableness of the method that John Berry, Trustee was listed in such Consulting Services Agreement and the factors, reasons and logic for the fees that became due to George H. Reid Investments Inc. following the default by WPS, Inc.

He may testify that the sale\leaseback was bank loan fundable by Plaintiff, John Berry. He may testify to his calculations of the lost income and profits that Plaintiff sustained

by reason of Defendant's attempt to rescind the contract. His C.V. is attached hereto as Exhibit B.

**Fact witnesses who may have expert opinions who are not retained by, employed by nor subject to the control of Plaintiffs**

4. The accountant who does or reviews Plaintiff's accounting and tax work. His opinions may be on ability of Plaintiff to conclude the sale/leaseback with WPS, Inc. and the potential income to Plaintiff from the transaction made the basis of this Agreement and the Consulting Services Agreement. They have or will have reviewed the financial information prepared by defendants around July, 2004, the pleadings; the letter from the defendants with their comments and other documents. They have or will form professional opinions as to the Plaintiff's damages. They have not completed any study enough to furnish opinions at this time. No resume is available but will be supplemented as soon as received.

**Fact witnesses who may have expert opinions**

6. John B. Berry  
PO Box 22030  
Houston, Texas 77227-2030  
800-749-3905

Plaintiff. Has knowledge of all matters including the damages Plaintiff suffered when defendant breached the contract and the damages plaintiff sustained from lost profit under the contract and the loss of benefits under the contract and specifically paragraph 17 of the contract. He is aware of how the offer was made to Defendants and how they accepted the offer and then how they tried to back out of the contract. He is aware of and testify as to plaintiff's damages. He is aware of and can testify to the way he would have funded the transaction if Defendant had not breached the contract. He will testify as to his background and experience as reflected by the C.V. furnished to defendant.

7. George H Reid  
P.O. Box 56449  
Houston, Texas 77256

713-724-2344

Mr. Reid is the president of the Defendant's consultant that was brokering the sale\leaseback and was a disclosed Principal with Plaintiff. He and his company had previous dealings with CapNet and Merrill Lynch regards the Defendants business which he will testify to, and was present or on line and can testify regarding most material conferences and telephone calls. He is aware of how the written offer was made to Defendants and how they accepted the offer and then tried to back out of the contract. He is aware of and testify as to both Plaintiff's damages. He can testify as to Defendants unsuccessful attempts to raise funds through various means. He will testify as to how he brought Plaintiff and Defendant together and how John Berry, Trustee could have raised the money to complete the transaction. He will testify to his Consulting Services Agreement with Defendant and to his fees that are due to him under their written contract which fees arise from such transaction. He will testify to his business experience and his background

- 8 In addition, Plaintiff reserves the right to elicit expert testimony on Plaintiff's behalf from all experts designated or identified by Defendant and other parties to this lawsuit.
9. Plaintiff also reserves the right to supplement this designation further within the time limitations imposed by the court, written agreements among the parties, or by any future alterations by subsequent court order, or agreement among the parties pursuant to the rules of civil procedure, or the rules of evidence.
10. Plaintiff also reserves the right to withdraw the designation of any expert witness and to aver positively that such previously designated expert will not be called as an expert witness at trial and to re-designate the expert as a consulting expert. *Scott v. McInlhany*, 798 S.W.2d 556 (Tex. 1990).
11. Plaintiff also reserves the right to call undesignated expert witnesses in rebuttal, whose identities and testimony cannot be reasonably foreseen until all other parties to this suit have presented their evidence at trial. *Alvarado v. Farah Manufacturing Co.*, 830 S.W.2d 911 (Tex. 1992).
12. Plaintiff also reserves the right to elicit and use any expert testimony and law opinion testimony that would assist the jury in determining

material issues of fact that would not violate the rules of civil procedure or the rules of civil evidence.

13. Plaintiff designates and may call to testify as adverse witnesses any and all expert witnesses designated by any other party, whether or not such party is still a party at the time of trial. See, *Ticor v. Lacy*, 803 S.W.2d 265 (Tex. 1991).
14. Plaintiff also reserves the right to supplement expert reports if and when additional information becomes available.

Respectfully submitted,

BOUSQUET & DEVINE, P.C.  
of counsel

/s/ Thomas G. Bousquet\_\_\_\_\_  
THOMAS G. BOUSQUET  
9225 Katy Freeway, Suite 103  
Houston, Texas 77024  
Fed. Bar # 3285  
Bar Card No. 02717000  
713-827-8000  
713-827-0096 fax

ATTORNEY FOR PLAINTIFFS

### **CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing instrument was duly served upon the following counsel of record by certified mail, return receipt requested or by hand delivery and by facsimile transmission as provided in the Federal Rules of Civil Procedure on this \_\_\_\_28th\_\_\_\_ day of \_\_\_\_March\_\_\_\_, 2007, and the original was promptly filed with the Clerk of the above Court, together with this proof of service.

Mr. James W. Henges  
Germer Getz, LLP  
PO Box 4915

Jeff Moss  
814 South Washington St.  
Lafayette La 70501

Beaumont, TX 77704

\_\_\_\_/s/ Thomas G. Bousquet\_\_\_\_\_  
THOMAS G. BOUSQUET